



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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JUL 19 2017

RE: MURs 6960 & 6991
SW Technologies, LLC

Dear Messrs. Wittenwyler and Zolik:

On September 1, 2015, and December 14, 2015, the Federal Election Commission notified your client, SW Technologies, LLC, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). Copies of the complaints were forwarded to your client at those times.

Upon review of the allegations contained in the complaints, and information supplied by you, the Commission, on July 11, 2017, found that there is reason to believe your client violated 52 U.S.C. § 30111(a)(4), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. See 52 U.S.C. § 30109(a)(4).

Please note that your client has a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If your client is interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the

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Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondent. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Claudio J. Pavia, the attorney assigned to this matter, at (202) 694-1597 or cpavia@fec.gov.

We look forward to your response.

On behalf of the Commission,



Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: SW Technologies, LLC

MURs 6960 & 6991

I. INTRODUCTION

These matters involve allegations that SW Technologies, LLC d/b/a Advocacy Data (“SWT”), a political marketing firm, violated the “sale and use” provision of the Federal Election Campaign Act of 1971, as amended (the “Act”), by compiling a commercial mailing list with the names and addresses of contributors obtained from Complainants’ FEC disclosure reports. For the reasons stated below, the Commission finds reason to believe that SWT violated 52 U.S.C. § 30111(a)(4).

II. FACTUAL SUMMARY

Complainants include “salted” names on their FEC disclosure reports to deter illegal use of their contributor information.¹ In June 2015, the Republican National Committee (“RNC”), Complainant in MUR 6991, received solicitation packages from the National Rifle Association and Jeb 2016, Inc. that were addressed to salted names.² The RNC contacted the mailing vendor who distributed the packages for Jeb 2016 and discovered that it had used the “Republican Elite Donors” mailing list, and that the list was marketed by TMA Direct.³ A “data card” for the

¹ MUR 6991 Compl. at 1 (Dec. 7, 2015); MUR 6960 Compl. at 1 (Aug. 27, 2015); see 11 C.F.R. § 104.3(e) (providing that political committees may submit up to ten fictitious names — *i.e.*, “salted” names — on each disclosure report for the purpose of determining whether the names and addresses of their contributors are being used without consent to solicit contributions or for commercial purposes).

² MUR 6991 Compl. at 2.

³ *Id.* It appears that Precision Marketing, Inc. was the mailing vendor. An August 12, 2015 email from Precision Marketing to the RNC states that “Republican Elite Donors is the one that we (Precision) has [sic] been mailing for Jeb.” *Id.*, Ex. A at 2. The RNC also confirmed that the Republican Elite Donors list was marketed by TMA Direct through an inquiry with Pinnacle List Company, a list brokerage and list management firm, which provided the RNC with a “data card” for the list, available on an industry website. MUR 6991 Compl., Ex. B at 1.

1 Republican Elite Donors list states that the base price for using the list was \$95 per one thousand
2 names (there were 200,872 names on the list) with additional information about the recipients
3 available for a premium.⁴

4 The RNC contacted TMA Direct and was informed that “[t]he list owner is Roger Stone,
5 from [SWT].”⁵ An RNC lawyer promptly sent SWT and Stone a written request that “[SWT]
6 cease and desist from utilizing federally protected FEC contribution reports containing RNC
7 contributor information, and from utilizing or selling the Republican Elite Donors list until
8 [SWT] removes from that list all illegally obtained RNC contributor information.”⁶ In response,
9 the following week, Stone left a voicemail with the RNC lawyer explaining that SWT had “taken
10 corrective action, and that it believed whatever data problem had existed was fixed.”⁷

11 However, several weeks later, in late June, July, and August of 2015, the RNC received
12 additional solicitation packages from Jeb 2016 and Carson America that were addressed to salted
13 names.⁸ The RNC again contacted TMA Direct, which confirmed that it had “brokered the list
14 orders” for the National Rifle Association, Jeb 2016, and Carson America to use the Republican
15 Elite Donors list in connection with all of the mailings which resulted in solicitation packages
16 addressed to the RNC’s salted names.⁹

⁴ MUR 6991 Compl., Ex. B at 2-3. The data card describes the list as “comprised of donors with deep pockets, [that] all have given large amounts to campaigns across America to advance the Republican agenda. They reflect all of the aspects of the Republican Party and will support any candidate or group that supports their agenda, time and time again.” *Id.* at 2.

⁵ MUR 6991 Compl. at 2; *id.*, Ex. C at 1.

⁶ MUR 6991 Compl. at 2; *id.*, Ex. D at 1; *see also* MUR Resp. 6991 at 2 (Jan. 19, 2016).

⁷ MUR 6991 Resp at 2; *see* MUR 6991 Compl. at 2.

⁸ MUR 6991 Compl. at 2.

⁹ *Id.*; *id.*, Ex. G at 1. TMA Direct did not specifically confirm that the National Rifle Association, Jeb 2016, or Carson America directly contracted with TMA Direct to rent the Republican Elite Donors list, only that “these orders were processed by TMA list management.” MUR 6991 Compl., Ex. G at 1. Jeb 2016 did not report any

1 In August 2015, the National Republican Congressional Committee ("NRCC"),
2 Complainant in MUR 6960, received a solicitation package addressed to a salted name from
3 Cruz for President.¹⁰ The NRCC contacted Cruz for President and discovered that it had used
4 the Republican Elite Donors list, and that the list was marketed by TMA Direct (at the time, it
5 appeared to the NRCC that TMA Direct was also the owner of the list).¹¹ Next, the NRCC
6 contacted TMA Direct and learned that the "list is owned by: Roger Stone" and was provided
7 with his contact information at SWT.¹² Per a request from the NRCC, TMA Direct agreed "to
8 suspend marketing [the Republican Elite Donors] list until the matter is resolved."¹³ An NRCC
9 lawyer immediately sent SWT and Stone an email demanding that SWT "cease and desist from
10 using or selling the Republican Elite Donors list until [SWT] removes all illegally-obtained
11 NRCC contributor information," to which the NRCC has not received a response.¹⁴

12 Respondents admit that the Republican Elite Donors list contained contributor
13 information from Complainants' disclosure reports, contending that it was "a one-time, isolated
14 and unintentional" mistake.¹⁵ They explain that SWT "recently added some FEC data to its
15 proprietary model for use in identifying likely Republican contributors," and that a third-party

disbursements to TMA Direct, whereas Carson America reported dozens of disbursements to TMA Direct during the 2016 election cycle, including several in the fall of 2015 for "List Rental," totaling \$950,311. Carson America Amended 2015 Year-End Rpt. at 31,473-74 (Mar. 28, 2016); Carson America 2015 October Quarterly Rpt. at 19,447 (Oct. 15, 2015).

¹⁰ MUR 6960 Compl. at 1.

¹¹ *Id.*, Ex. C at 3. Cruz for President did not report any disbursements to TMA Direct, and the Complaint does not provide any information regarding a third-party vendor that might have contracted with TMA Direct on the committee's behalf.

¹² *Id.* at 2. TMA Direct did not explicitly state that either or both Stone and SWT were the list owners.

¹³ *Id.* at 1-2.

¹⁴ MUR 6960 Compl., Ex. D at 1; MUR 6960 Compl. at 2; *see* MUR 6991 Resp. at 2.

¹⁵ MUR 6991 Resp. at 3; *see also* MUR 6960 Resp. at 2 (Oct. 20, 2015).

1 data vendor “inadvertently” copied the information into a file that would become the Republican
2 Elite Donors list.¹⁶ Respondents maintain that the (unidentified) data vendor’s actions were in
3 contradiction to SWT’s “long-standing instructions.”¹⁷

4 After receiving notification from the RNC, in June 2015, Respondents admit that SWT
5 attempted, but failed, to delete the RNC’s contributor information from the Republican Elite
6 Donors list.¹⁸ They explain that SWT “assumed . . . that the source . . . was a batch of donor lists
7 that the company had obtained through another broker in April of 2015,” and pulled the data
8 originating from those lists, mistakenly believing that it would capture the RNC’s contributor
9 information.¹⁹ After receiving notification from the NRCC, in August 2015, which revealed that
10 the list still contained contributor information from FEC disclosure reports, Respondents claim
11 that SWT finally solved the problem by removing all data that had originated from the file
12 prepared by the unnamed third-party data vendor, described above.²⁰

13 Respondents contend that SWT has “fully examined” its other mailing lists; it determined
14 that none contain the salted names referenced in either of the Complaints.²¹ In addition, they
15 claim that SWT has “implemented protective measures to better ensure that FEC data will not be
16 used for fundraising purposes going forward,” including that SWT has “pulled all FEC data from

¹⁶ MUR 6991 Resp. at 2.

¹⁷ *Id.* (“The FEC data is specifically segregated and not intended to be used on fundraising lists that are later marketed for solicitation or any other commercial purpose. The intent and design was for the FEC data to only be used to help create the research model, not for any contributor data on it to be distributed or sold to others for solicitation purposes.”).

¹⁸ *Id.* Specifically, Respondents state that “TMA Direct notified [SWT] of a call from the RNC relating to a list containing an RNC ‘salt.’” *Id.*

¹⁹ *Id.*

²⁰ *Id.* Respondents do not describe how SWT determined that the file prepared by the unnamed third-party data vendor was the true source of the RNC’s and NRCC’s contributor information.

²¹ *Id.* at 3.

1 its proprietary models.”²² Moreover, Respondents maintain that using information obtained from
2 FEC disclosure reports for list-making purposes “has never been part of [SWT’s] business model
3 or practice,” and that its leadership “understands [the applicable] FEC regulation” from many
4 years of experience in government and politics.²³

5 III. LEGAL ANALYSIS

6 A. Relevant Law

7 Political committees shall disclose the identification of each person whose aggregate
8 contributions exceed \$200 within the calendar year (or election cycle in the case of an authorized
9 committee) along with the date and amount of any such contribution.²⁴ The Commission shall
10 make all reports available for public inspecting and copying.²⁵

11 The Act’s sale and use provision states that information obtained from the Commission’s
12 reports “may not be sold or used by any person for the purpose of soliciting contributions or for
13 commercial purposes, other than using the name and address of any political committee to solicit
14 contributions from such committee.”²⁶ In accordance with congressional intent, the Commission
15 has concluded that the sale and use provision applies to contribution information, including
16 contributors’ identifying information as well as their contribution history.²⁷ When determining if

²² *Id.* Respondents do not specify any other corrective measures.

²³ *Id.* at 1; MUR 6960 Resp. at 1.

²⁴ 52 U.S.C. § 30104(b)(3)(A); *see id.* § 30101(13)(A) (defining “identification,” in the case of an individual, as name, mailing address, occupation, and employer).

²⁵ *Id.* § 30111(a)(4).

²⁶ *Id.*; *see also* 11 C.F.R. § 104.15. The Commission’s implementing regulation provides that “*soliciting contributions* includes soliciting any type of contribution or donation, such as political or charitable contributions. 11 C.F.R. § 104.15(b) (emphasis in original).

²⁷ *See e.g.*, Advisory Op. 2004-24 at 2-3 (NGP); Advisory Op. 1985-16 at 2 (Weiss); Advisory Op. 1980-101 at 2 (Weinberger) (“[The sale and use provision] specifically focuses on prohibiting the use of any contributor information found in those reports.”); Factual & Legal Analysis at 5, MUR 5625 (Aristotle Int’l, Inc.); *see* 117

1 sale or use of information obtained from FEC disclosure reports constitutes a violation, the
2 Commission has looked to whether the purpose was solicitation-related.²⁸

3 **B. There is Reason to Believe That SWT Violated the Sale and Use Provision**

4 Respondents acknowledge that the Republican Elite Donors list contained contributor
5 information obtained from Complainants' FEC disclosure reports and do not dispute that the list
6 was sold for the purpose of soliciting contributions.²⁹ SWT created and then transferred the
7 Republican Elite Donors list to TMA Direct, a list brokerage firm, which marketed the list.³⁰ At
8 least four organizations, either directly or through a third-party vendor, rented the list from TMA
9 Direct to solicit contributions. Respondents, however, contend that the contributor information
10 was inserted into the list by mistake, and that the offending data appeared on the list only during
11 the summer of 2015.³¹

12 Based on this information, the Commission finds reason to believe that SWT violated
13 52 U.S.C. § 30111(a)(4) in connection with its sale and use of contributor information obtained
14 from FEC disclosure reports.

Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon), *reprinted in* Legislative History of the Federal Election Campaign Act of 1971 at 581 (1981) ("[T]he purpose of this amendment is to protect the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party.").

²⁸ See, e.g., Advisory Op. 2013-16 at 6 (PoliticalRefund.org); Advisory Op. 1988-02 at 2 (Chicago Board of Options Exchange II) ("[T]he Commission has permitted the use of individual contributor information only in narrow circumstances not related to solicitation or commercial purposes."); Advisory Op. 1984-02 at 2 (Gramm); Advisory Op. 1981-05 at 2 (Findley).

²⁹ See MUR 6991 Resp. at 2-3.

³⁰ See *id.* at 2.

³¹ *Id.* at 1, 3.